

## Office of the Secretary, Commerce

## § 15.18

### **§ 15.16 Legal proceedings between private litigants: Expert or opinion testimony.**

In addition to the policies and procedures as outlined in §§15.11 through 15.16, the following applies to legal proceedings between private litigants:

(a) If a Department employee is authorized to give testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Department employee. Employees, with or without compensation, shall not provide expert testimony in any legal proceedings regarding Department information, subjects or activities except on behalf of the United States or a party represented by the United States Department of Justice. However, upon a showing by the requester that there are exceptional circumstances and that the anticipated testimony will not be adverse to the interest of the Department or the United States, the General Counsel, or the Solicitor, or appropriate agency counsel may, in writing grant special authorization for the employee to appear and give the expert or opinion testimony.

(b)(1) If, while testifying in any legal proceeding, an employee is asked for expert or opinion testimony regarding official DOC information, subjects or activities, which testimony has not been approved in advance in accordance with the regulations in this subpart, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by the regulations in this subpart;

(ii) Request an opportunity to consult with the General Counsel, or the Solicitor, or appropriate agency counsel before giving such testimony; and

(iii) Explain that upon such consultation, approval for such testimony may be provided.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony regarding official DOC information, subjects or activities without the opportunity to consult with either the General Counsel, or the Solicitor, or appropriate agency counsel, the witness shall respectfully refuse to provide

such testimony. See *United States ex rel. Touhy v. Ragen*, 340 U. S. 462 (1951).

(c) If an employee is unaware of the regulations in this subpart and provides expert or opinion testimony regarding official DOC information, subjects or activities in a legal proceeding without the aforementioned consultation, the witness shall, as soon after testifying as possible, inform the General Counsel, or the Solicitor, or appropriate agency counsel that such testimony was given and provide a written summary of the expert or opinion testimony provided.

[60 FR 9291, Feb. 17, 1995. Redesignated and amended at 62 FR 19669, 19670, Apr. 23, 1997]

### **§ 15.17 Demands or requests in legal proceedings for records protected by confidentiality statutes.**

Demands in legal proceedings for the production of records, or for the testimony of Department employees regarding information protected by the Privacy Act, 5 U.S.C. 552a, the Trade Secrets Act, 18 U.S.C. 1905 or other confidentiality statutes, must satisfy the requirements for disclosure set forth in those statutes before the records may be provided or testimony given. The General Counsel, or the Solicitor, or appropriate agency counsel should first determine if there is a legal basis to provide the testimony or records sought under applicable confidentiality statutes before applying §§15.11 through 15.18. Where an applicable confidentiality statute mandates disclosure, §§15.11 through 15.18 will not apply.

[60 FR 9291, Feb. 17, 1995. Redesignated and amended at 62 FR 19669, 19670, Apr. 23, 1997]

### **§ 15.18 Testimony of Department employees in proceedings involving the United States.**

The following applies in legal proceedings in which the United States is a party:

(a) A Department employee may not testify as an expert or opinion witness for any other party other than the United States.

(b) Whenever, in any legal proceeding involving the United States, a request is made by an attorney representing or acting under the authority of the United States, the General Counsel, or

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the Solicitor, or appropriate agency counsel will make all necessary arrangements for the Department employee to give testimony on behalf of the United States. Where appropriate, the General Counsel, or the Solicitor, or appropriate agency counsel may require reimbursement to the Department of the expenses associated with a Department employee giving testimony on behalf of the United States.

### Subpart C—Involuntary Child and Spousal Support Allotments of NOAA Corps Officers

SOURCE: 53 FR 15548, May 2, 1988, unless otherwise noted. Redesignated at 62 FR 19669, Apr. 23, 1997.

#### § 15.21 Purpose.

This subpart provides implementing policies governing involuntary child or child and spousal support allotments for officers of the uniformed service of the National Oceanic and Atmospheric Administration (NOAA), and prescribes applicable procedures.

#### § 15.22 Applicability and scope.

This subpart applies to Commissioned Officers of the NOAA Corps on active duty.

#### § 15.23 Definitions.

(a) *Active duty.* Full-time duty in the NOAA Corps.

(b) *Authorized person.* Any agent or attorney of any state having in effect a plan approved under part D of title IV of the Social Security Act (42 U.S.C. 651–664), who has the duty or authority to seek recovery of any amounts owed as child or child and spousal support (including, when authorized under the state plan, any official of a political subdivision); and the court that has authority to issue an order against a member for the support and maintenance of a child or any agent of such court.

(c) *Child support.* Periodic payments for the support and maintenance of a child or children, subject to and in accordance with state or local law. This includes but is not limited to, payments to provide for health, education, recreation, and clothing or to meet

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other specific needs of such a child or children.

(d) *Designated official.* The official who is designated to receive notices of failure to make payments from an authorized person (as defined in paragraph (b) of this section). For the Department of Commerce this official is the Assistant General Counsel for Administration.

(e) *Notice.* A court order, letter, or similar documentation issued by an authorized person providing notification that a member has failed to make periodic support payments under a support order.

(f) *Spousal support.* Periodic payments for the support and maintenance of a spouse or former spouse, in accordance with state and local law. It includes, but is not limited to, separate maintenance, alimony while litigation continues, and maintenance. Spousal support does not include any payment for transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(g) *Support order.* Any order for the support of any person issued by a court of competent jurisdiction or by administrative procedures established under state law that affords substantial due process and is subject to judicial review. A court of competent jurisdiction includes: (1) Indian tribal courts within any state, territory, or possession of the United States and the District of Columbia; and (2) a court in any foreign country with which the United States has entered into an agreement that requires the United States to honor the notice.

#### § 15.24 Policy.

(a) It is the policy of the Department of Commerce to require Commissioned Officers of the NOAA Corps on active duty to make involuntary allotments from pay and allowances as payment of child, or child and spousal, support payments when the officer has failed to make periodic payments under a support order in a total amount equal to the support payable for two months or longer. Failure to make such payments